

ORDINANCE NO. 20190919-038

AN ORDINANCE AMENDING CITY CODE CHAPTERS 8, 10, AND 14 TO DEREGULATE THE OCCASIONAL SALE OF NONALCOHOLIC BEVERAGES BY MINORS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Findings

The City Council finds that amendments to certain subchapters of Chapters 8 (*Parks and Recreation*), 10 (*Public Health Services and Sanitation*), and 14 (*Use of Streets and Public Property*) of the City Code are necessary to ensure consistency with House Bill 234, adopted during the 86th Regular Session of the Texas Legislature, deregulating the occasional sale of nonalcoholic beverages by persons under the age of 18.

PART 2. Section 8-1-13 (*Fee for Park Use; Exception*) of the City Code is amended by adding a new subsection 8-1-13(D) to read:

SECTION 8-1-13 FEE FOR PARK USE; EXCEPTION.

(D) A person under the age of 18 engaging in the occasional sale of nonalcoholic beverages may not be charged a fee under this section.

PART 3. Section 8-1-14 (*Approval for Commercial Activity*) of the City Code is amended by adding a new subsection 8-1-14(F) to read:

SECTION 8-1-14 APPROVAL FOR COMMERCIAL ACTIVITY.

(F) A person under the age of 18 engaging in the occasional sale of nonalcoholic beverages may not be required to obtain approval under this section.

PART 4. Section 8-1-71 (*Concessions Authorized*) of the City Code is amended by designating the existing language as subsection 8-1-71(A) and adding a new subsection 8-1-71(B) to read:

SECTION 8-1-71 CONCESSIONS AUTHORIZED.

- (A) If authorized by the director, a person may operate a food or beverage, rental, or service concession in Lady Bird Lake Park.
- (B) A person under the age of 18 engaging in the occasional sale of nonalcoholic beverages may not be required to obtain authorization under this section.

PART 5. Section 8-3-3 (*Sales of Food and Beverages*) of the City Code is amended by adding a new subsection 8-3-3(E) to read:

SECTION 8-3-3 SALES OF FOOD AND BEVERAGES.

- (E) A person under the age of 18 engaging in the occasional sale of nonalcoholic beverages may not be required to obtain approval under this section.

PART 6. Section 8-3-4 (*Glass Containers Prohibited*) of the City Code is amended by adding a new subsection 8-3-4(E) to read:

SECTION 8-3-4 GLASS CONTAINERS PROHIBITED.

- (E) This section does not apply to the occasional sale of nonalcoholic beverages by a person under the age of 18.

PART 7. Subsection (B) of Section 10-3-1 (*Definitions*) of the City Code is amended to read:

§ 10-3-1 DEFINITIONS.

- (B) In this chapter:
 - (1) AGRICULTURAL PRODUCT means produce, meat, fish, honey, dairy, seeds, live plants intended for food production, and compost products produced by a farmer.
 - (2) BAKED GOODS means cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking in an oven. A baked good does not include a potentially hazardous food item.

- (3) BONA FIDE EDUCATIONAL PURPOSE means providing cooking demonstrations solely for the purpose of informing, training, or educating persons about how to prepare foods, or providing samples in order to inform persons of the quality and characteristics of the sample, and is not done in conjunction with the sale of food or food products.
- (4) CERTIFIED FARMERS MARKET means a farmers market that has been certified by the Texas Department of Agriculture pursuant to Subchapter D of Title 4 of the Texas Administrative Code.
- (5) CHILDREN'S ~~NEIGHBORHOOD~~ BEVERAGE STAND means a temporary food establishment that is:
- (a) operated occasionally by a child 17 years of age or younger;
 - (b) located [~~in a neighborhood, defined as a geographical area of Austin zoned for single family or multi family residential use only;~~] on private property or a public park;
 - (c) providing non-alcoholic beverages [~~, defined to mean lemonade, cold or hot tea, coffee, and hot chocolate, in single use, disposable cups and articles for use by customers];~~ and
 - (d) [~~operated no more than six periods of 14 consecutive days, and no more than 84 days total in a calendar year~~] if the sale occurs in a residential subdivision, the child has the permission of a property owner in the subdivision for the sale.
- (6) CONCESSION STAND means a food establishment operated by a city or county, a non-profit organization, or public school district from which limited foods are served during athletic or entertainment events.
- (7) FARM PRODUCE means herbs and spices in their natural or dried state, vegetables, fruits, unshelled nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state.

- (8) FARMERS MARKET VENDOR means a vendor operating an individual booth at a certified farmers market with a Class A, B, or C permit described in Section 10-3-97 of this chapter.
- (9) FOOD ENTERPRISE includes:
- (a) a food establishment;
 - (b) a food processing plant;
 - (c) a certified farmers market vendor;
 - (d) a temporary food establishment; and
 - (e) a mobile food establishment.
- (10) FOOD ESTABLISHMENT RULES means Title 25 of the Texas Administrative Code, Part 1, Chapter 228, (*Texas Food Establishment Rules*).
- (11) FOOD HANDLER means a food enterprise employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.
- (12) LIMITED FOODS means foods requiring limited handling and preparation and that may be heated for hot holding and service. The term does not include foods cooked from a raw state, or that are cooled and reheated for subsequent service.
- (13) MARKET MANAGER means a person who is designated as the person-in-charge of a certified farmers market.
- (14) MOBILE FOOD ESTABLISHMENT means one of two types of mobile food operations:
- (a) A restricted unit that offers only prepackaged food in individual servings; beverages that are not potentially hazardous and are dispensed from covered urns or other protected vessels; and packaged frozen foods. Preparation, assembly or cooking of foods is not allowed. A foot peddler permit is a restricted unit is limited

to one portable ice chest, cooler, case or unit per permit, capable of being carried by one person; or

(b) An unrestricted unit that may serve food as allowed in (a), and may cook, prepare and assemble a full menu of food items;

(i) Except as provided in subsection (ii) below, an unrestricted unit must be secured and completely enclosed; and

(ii) Foods such as hot dogs, coffee, or shaved ice, or food with prior approval from the health authority, may be served from vehicles with three sides and a cover.

(15) **PERSON IN CHARGE** means an employee who possesses a food manager certificate at a food enterprise, bed and breakfast limited or unrestricted mobile food establishment. If the person possessing a food manager certificate is not present, then if an employee appears to be a supervisor, that employee is the person in charge.

(16) **QUALIFIED HIGH QUALITY CHILD CARE CENTER** means a child care center that accepts child care subsidies, is licensed by the State of Texas, and certified by one or more of the following agencies: the National Association for the Education of Young Children, the National Accreditation Commission for Early Care and Educational Programs, or a Four-Star rated Texas Rising Star program.

(17) **SAMPLING** means the demonstration or promotion of a food via offering a small serving of the food which cannot be, and is not, sold and which may not consist of a whole meal, an individual portion or a whole sandwich.

(18) **SINGLE BOOTH EVENT** means an event consisting of a single booth and operating for a single day.

(19) **TEMPORARY FOOD ESTABLISHMENT** shall mean a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single special event or

celebration. A farmers market vendor is not a temporary food establishment.

(20) TEMPORARY FOOD BOOTH shall mean a single small enclosure used for food preparation, or food handling, or both, and service by an individually permitted vendor.

(21) UNSAFE FOOD means:

- (a) food that contains any chemical, poisonous or injurious substance which may be harmful to the health of a consumer;
- (b) food that is not packaged in conformity with this chapter;
- (c) food that contains a contaminated or putrid substance; or
- (d) food that has been prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or may have been rendered diseased, unwholesome, or harmful to health.

(22) VIOLATION means the failure to follow this Chapter 10-3 or the commission of an act prohibited by this Chapter. A violation may result in reinspection fees being assessed, permit suspension or charges being filed in municipal court for reasons including but not limited to:

- (a) scoring below a 70 on a food enterprise inspection;
- (b) using an unapproved source;
- (c) home prepared foods; or
- (d) food out of temperature compliance.

PART 8. Subsection (F) of Section 10-3-61 (*Permit Required*) of the City Code is amended to read:

§ 10-3-61 PERMIT REQUIRED.

- (F) A person operating a children's [~~neighborhood~~] beverage stand [~~providing non-hazardous beverages~~] does not require a permit.

PART 9. Subsection (9) of Section 14-9-13 (*Exceptions to Prohibition Against Obstruction for Sale, Rental, or Lease of Merchandise or Services*) of the City Code is amended to read:

§ 14-9-13 EXCEPTIONS TO PROHIBITION AGAINST OBSTRUCTION FOR SALE, RENTAL, OR LEASE OF MERCHANDISE OR SERVICES.

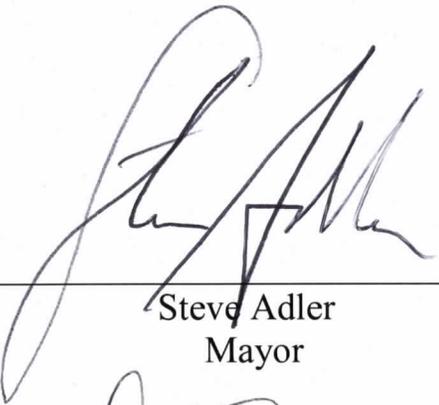
(9) a children's [~~neighborhood~~] beverage stand as defined by City Code Section 10-3-1 (*Definitions*).

PART 10. This ordinance takes effect on September 30, 2019.

PASSED AND APPROVED

September 19, 2019

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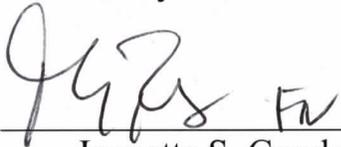
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk